IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 11TH APRIL 2007 / 21ST CHAITHRA 1929

WP(C).No. 12264 of 2007(I)

PETITIONER:

KAJIBI, AGED 60 YEARS,
W/O.UKKAS HAJI, RESIDING AT BEKALKUNNU,
MASTHIGUDDA, PALLIKKARA II VILLAGE,
HOSDURG TALUK, KASARAGOD DISTRICT.

BY ADV. SRI.C.MURALIKRISHNAN (PAYYANUR)

RESPONDENTS:
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1. THE SPECIAL TAHSILDAR,(LA) RAILWAY,
KASARAGOD.

2. THE DEPUTY CHIEF ENGINEER,
CONSTRUCTIONS (SOUTHERN RAILWAY),
KANNUR.

BY ADV. SRI.SUBAL J.PAUL, SC, RAILWAYS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE ORDER IN I.A. NO.469 OF 2006 IN LAR NO.30 OF 2003 OF SUB COURT, HOSDURG.

EXHIBIT P2 TRUE COPY OF THE AFFIDAVIT, PETITION AND ORDER IN I.A. NO.693 OF 2006, SUB COURT, HOSDURG.

RESPONDENTS' EXHIBITS: NIL

K. PADMANABHAN NAIR, J.

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W.P(C) NO. 12264 OF 2007

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Dated this the 11th day of April, 2007

J U D G M E N T

Heard. Admitted. Learned Government Pleader took notice for the first respondent and Standing Counsel for the Railways for the second respondent. The Writ Petition itself is heard and disposed of as agreed to by both parties.

2. Petitioner's property was acquired for a public purpose. He received the compensation under protest and filed an application for referring the case for enhancement of compensation. The case was referred to the Sub Court and on receipt of the records, the same was numbered as LAR No.30 of 2003. The case was posted for trial in the special list on 10.3.2006. On that day the petitioner was absent. Learned Sub Jude dismissed the LAR for default. Petitioner filed an application, I.A. No.469 of 2006, under Order IX Rule 9 CPC for restoration of the LAR dismissed for default. The Sub Judge by order dated 14.7.2006 allowed the application. But it was a conditional order. It was ordered that the petitioner must remit

a sum of Rs.2,000/- before the District Legal Services Authority and shall produce the receipt on or before 18.7.2006 for restoring the LAR. Petitioner did not deposit the amount in time. On the other hand, petitioner filed another application, I.A. No.693 of 2006, for enlargement of time for deposit. Learned Sub Judge had dismissed that application and the petition for restoration. Challenging those orders, this Writ Petition is filed.

3. Learned Sub Judge allowed the restoration application finding that there was at least some reason for the non-appearance of the petitioner on the date on which the LAR was posted for trial. He passed a conditional order by which the petitioner was directed to pay Rs.2,000/- before the DLSA. That order was passed on 14.7.2006. Petitioner was directed to deposit the amount by 18.7.2006. So, virtually, the petitioner got only 3 days' time to comply with the order passed by the Sub Judge. When the court passes a conditional order, it is the duty of the court to see that some reasonable time is given to the party against whom the order is passed to comply with the same. The learned Sub Judge ought to have considered the practical difficulties in the matter, such as giving information to the party

by the lawyer and availability of fund, etc. Hence I am of the view that the orders passed by the learned Sub Judge in I.A. Nos.469 and 693 of 1993 (restoration of the LAR and enlargement of time for deposit respectively) are liable to be set aside.

4. In the result, the orders passed by the learned Sub Judge, Hosdurg dismissing I.A. Nos.469 and 693 of 2006 in LAR No.30 of 2006 are hereby set aside. Petitioner is given time till 31.5.2007 to pay the amount directed to be deposited. If the petitioner deposits the cost ordered before the DLSA within the time granted as per this judgment, I.A.No. 469 of 2006 will stand allowed in which case, the learned Sub Judge shall restore LAR No.30 of 2003 back to file and dispose of the same in accordance with law.

Writ Petition is disposed of as above.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. OF

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J U D G M E N T

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9TH APRIL, 2007